

Spillman
Copy

COMPUTER SOFTWARE END-USER LICENSE AGREEMENT

between

SPILLMAN DATA SYSTEMS, INC. ("SDS")
910 SOUTH STATE
LOGAN, UTAH 84321
(801)753-1610

AND

Asotin County Sheriff ("Licensee")
P.O. Box 130
Asotin, WA 99402
(509) 243-4171

THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF SDS'S OBLIGATIONS AND RESPONSIBILITIES TO YOU AND SUPERSEDES ANY OTHER PROPOSAL, REPRESENTATION, OR OTHER COMMUNICATION BY OR ON BEHALF OF SDS RELATING TO THE SUBJECT MATTER HEREOF. YOUR LICENSE OF THE LICENSED PROGRAM WILL NOT COMMENCE UNTIL YOU HAVE EXECUTED THIS AGREEMENT AND AN AUTHORIZED REPRESENTATIVE OF SDS HAS RECEIVED, APPROVED, AND EXECUTED A COPY OF IT AS EXECUTED BY YOU.

1. Product. The product is the "Licensed Program," which is defined to be the package of computer software in machine-readable form and any related user documentation which may be ordered from time to time by Licensee's acceptance of an SDS Software Order.

2. License. In consideration of the payment of license fees, SDS grants you a non-exclusive, non-transferable license to use the "Licensed Program", subject to the following terms and conditions.

3. Scope of Rights. You may:

- a. Install the Licensed Program in your own facility.
- b. Use the Licensed Program for purposes of serving the internal needs of your business.
- c. Make one copy of the program in machine-readable form, for nonproductive backup purposes only, provided that SDS's proprietary legend is included.

You may not use, copy, or modify the Licensed Program, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by SDS. Your rights may not be transferred. You may not install the Licensed Program in any other computer system or use it at any other location without SDS's express authorization obtained in advance (which will not be unreasonably withheld). If you use, copy, or modify the Licensed Program or if you transfer possession of any copy, adaptation, transcription, or merged portion of the Licensed Program to any other party in any way not expressly authorized by SDS, your license is automatically terminated.

You are solely responsible for payment of any taxes (including sales or use taxes and intangible taxes) resulting from your acceptance of this license and your possession and use of the Licensed Program. SDS reserves the right to have you pay any such taxes as they fall due to SDS for remittance to the appropriate authority. You agree to hold harmless SDS from all claims and liability arising from your failure to report or pay such taxes.

You are responsible for selecting a system administrator who is qualified to operate the Licensed Program on your own equipment and is familiar with the information, calculations, and reports that serve as input and output of the Licensed Program. SDS reserves the right to refuse assistance or to charge additional fees if a system administrator seeks assistance with respect to such basic background information or any other matters not directly related to the operation of the Licensed Program.

Other accessories (hardware or software) may be required for the use of the Licensed Program. Except as agreed otherwise in writing, SDS assumes no responsibility under this Agreement for obtaining or supporting such accessories. You are also responsible for ensuring a proper environment and proper utilities for the computer system on which the Licensed Program operates, including an uninterrupted power supply.

You are responsible for converting your own data files for use with the Licensed Program.

4. Proprietary Protection of Licensed Program. SDS shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Program and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted by SDS. This Agreement does not provide you with title or ownership of the Licensed Program, but only a right of limited use. You must keep the Licensed Program free and clear of all claims, liens, and encumbrances.

The Licensed Program is a commercially valuable, proprietary product of SDS, the design and development of which reflect the effort of skilled development experts and the investment of considerable time and money. The Licensed Program is treated by SDS as confidential and contains substantial trade secrets of SDS, which SDS has entrusted to you in confidence to use only as expressly authorized. SDS claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Licensed Program, and in all system documentation related thereto, as unpublished works.

You may not, at any time, disclose or disseminate the Licensed Program to any person who does not need to obtain access thereto consistent with your rights under this Agreement. Under no circumstances may you "unlock" the code of the Licensed Program, as the term is generally used in the trade. Under no circumstances may you disclose or disseminate the Licensed Program to any competitor of SDS. You will devote your best efforts to ensure that all your personnel and all other persons afforded access to the Licensed Program shall protect it against improper use, dissemination, or disclosure.

You hereby authorize SDS to enter your premises in order to inspect the Licensed Program in any reasonable manner during regular business hours.

You acknowledge that, in the event of your breach of any of the foregoing provisions, SDS will not have an adequate remedy in money or damages. SDS shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request. SDS's right to obtain injunctive relief shall not limit its right to seek further remedies.

Your obligations hereunder shall remain in effect for as long as you continue to possess or use the Licensed program or any trade secrets derived therefrom.

5. Payment for Goods. The total fee, (as set forth on an SDS Software Order), shall be paid to SDS according to the following schedule:

Upon contract signing	25%
Upon installation	25%
Upon completion of training	50%

6. Limited Warranty. SDS warrants, for your benefit alone, that the Licensed Program conforms in all material respects to the specifications for the current version of the Licensed Program as described in SDS product specifications as of this date and for a period of one (1) year hereafter. This warranty is expressly conditioned on your observance of the operating, security, and data-control procedures set forth in the User's Manual(s) included with the Licensed Program.

SDS is not responsible for obsolescence of the Licensed Program that may result from changes in your requirements. The foregoing warranty shall apply only to the most current version of the Licensed Program issued by SDS from time to time. SDS assumes no responsibility for the use of superseded, outdated, or uncorrected versions of the Licensed Program.

As your exclusive remedy for any material nonconformity or defect in the Licensed Program for which SDS is responsible, SDS shall attempt through reasonable effort to correct or cure such nonconformity or defect. However, SDS shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Licensed Program if you have made any changes whatsoever to the Licensed Program, if the Licensed Program has been misused or damaged in any respect, or if you have not reported to SDS the existence and nature of such nonconformity or defect promptly upon discovery thereof.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SDS DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE LICENSED PROGRAM, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

The cumulative liability of SDS to you for all claims related to the Licensed Program and this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of all license fees paid to SDS hereunder. This limitation of liability is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

In no event shall SDS be liable for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against you, even if SDS has been advised of the possibility of such claims or demands. This limitation upon damages and claims is intended to apply without regard to which other provisions of this Agreement have been breached or have proven ineffective.

7. Term. Your license of the Licensed Program shall become effective upon delivery of the Licensed Program to you and shall continue unless terminated as provided herein.

Licensee may terminate this agreement at any time upon written notice to SDS.

Upon termination of this Agreement, all rights granted to you will terminate and revert to SDS. Promptly upon termination of this Agreement for any reason or upon discontinuance or abandonment of your possession or use of the Licensed Program, you must return, or certify the destruction of, all copies of the Licensed Program in your possession (whether modified or unmodified), and all other materials pertaining to the Licensed Program (including all copies thereof).

8. General. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against who enforcement of the modification is sought. Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed.

In the event that any of the terms of this Agreement is or becomes or is declared to be invalid or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement, and all the remaining terms of this Agreement shall remain in full force and effect.

SDS WANTS YOU TO BE CONFIDENT THAT THE LICENSED PROGRAM WILL SUIT YOUR NEEDS. ALTHOUGH YOU MUST MAKE THAT DETERMINATION YOURSELF, SDS IS PREPARED TO FULLY DISCUSS THE LICENSED PROGRAM WITH YOU AND ANSWER YOUR QUESTIONS. BY EXECUTING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE BEEN GIVEN AN ADEQUATE OPPORTUNITY TO INVESTIGATE YOUR COMPUTER AND SOFTWARE NEEDS AND THAT BASED ON YOUR EXAMINATION OF THE LICENSED PROGRAM, THE LICENSED PROGRAM IS SATISFACTORY.

[Licensee:]

Signed:

Don R. Steele

Printed:

Don R. Steele

Title:

Sheriff

Date:

1-29-, 19 92

Accepted and Approved by SDS:

Signed:

Duane Barker

Printed:

Duane Barker

Title:

Vice President - Finance

Date:

1-6, 19 92

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